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18th Annual Report

California Board of
Legal Specialization

State Bar of California
2005

EIGHTEENTH ANNUAL REPORT OF THE CALIFORNIA BOARD OF LEGAL SPECIALIZATION

This report covers the period from 1/1/04 through 12/31/04

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They have not been adopted or endorsed by the State Bar's Board of Governors and
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BACKGROUND

THE PROGRAM FOR CERTIFYING LEGAL SPECIALISTS

The Legal Specialization program is a Supreme Court approved method of certifying attorneys as specialists in particular areas of law, and operates pursuant to the following regulatory structure:

- Rule 983.5, adopted by the Supreme Court, which contains a provision authorizing the State Bar to adopt rules to establish and administer a program to certify legal specialists;
- Rules Governing the State Bar of California Program for Certifying Legal Specialists ("Rules"), adopted by the Board of Governors, which contain the details for operation of the program; and
- Standards for Certification and Recertification in each specialty area, adopted by the Board of Governors.

The requirements to become a certified specialist are as follows:

- passage of a written examination in the specialty area
- participation in continuing education activities in the specialty area
- demonstration of experience in the specialty area based on performance of a variety of activities related to that area
- favorable evaluation by other attorneys and judges familiar with the attorney's work in the specialty area

Certification is valid for a five-year period, during which time specialists must continue to meet task and education requirements similar to those for certification in order to qualify for recertification.

Costs of the program are entirely defrayed by annual fees, as well as certification, recertification, education provider, and accreditation fees. The Rules mandate that specialization be self-supporting.

HISTORY

The program was established to:

- give consumers another tool to use in selecting an attorney. Formal certification protects the public by regulating advertising of special skills by attorneys to assure that such claims are not misleading to the public. The program authorizes attorneys who satisfy specific criteria to hold

themselves out as “certified specialists.” The public may rely on the fact that certified specialists have had to demonstrate their proficiency in their practice area.

- "level the playing field" by allowing attorneys who are not in large firms to demonstrate their proficiency to the public. The program gives sole practitioners, attorneys in small firms, attorneys in small towns, women and minorities a way of gaining recognition for their knowledge, work and skills, and advertising their proficiency in a particular area of law to the public.
- encourage attorney competence through the development of continuing legal education (CLE) programs. Specialists have been required to take CLE in their areas of practice long before the inception of the MCLE requirement for all bar members. Even now, the CLE requirement for specialists is almost double that of the general bar.

TIMELINE

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| 1970 | California became the first state to establish a system for "certifying" legal specialists. Based on a proposal by the Committee on Legal Specialization, the State Bar Board of Governors adopted a "Pilot Program" to develop through experience the most feasible and useful certification program. |
| 1972 | The "Pilot Program," which certified specialists in Criminal Law, Taxation Law, and Workers' Compensation Law, was approved by the California Supreme Court. |
| 1973 | The first examinations in Criminal Law, Taxation Law and Workers' Compensation Law were offered. |
| 1979 | Family Law was added to the Pilot Program. |
| 1984 | The Board of Governors voted to recommend that the Supreme Court make the State Bar of California Program for Certifying Legal Specialists ("Program") permanent. |
| 1985 | The California Supreme Court approved the Program. |
| 1986 | Immigration and Nationality Law was added to the Program. |
| 1988 | Estate Planning, Trust and Probate Law was added to the Program. |
| 1993 | Personal and Small Business Bankruptcy Law was added to the Program. |

- 1994 Based upon a proposal by the California Board of Legal Specialization ("CBLS") to streamline and standardize what had become an overly complex certification process, the Board of Governors requested the California Supreme Court to repeal the Program and adopt new rule of court 983.5 [Certifying Legal Specialists], an enabling rule containing a provision authorizing the State Bar to adopt rules to establish and administer a program for certifying legal specialists.
- The Board also approved new program rules and revised standards for certification and recertification in each specialty area.
- 1995 The Supreme Court repealed the Program and adopted rule 983.5.
- Appellate Law was added to the Program.
- 1996 Rule 983.5 and the new program rules and revised standards went into effect on January 1.
- 1997 The program rules and standards were revised again effective June 1. The changes were the result of an ongoing effort to make application and certification processes efficient and cost-effective. For the most part, the changes were "housekeeping" amendments aimed at providing answers to the most frequently asked questions about the program, incorporating past administrative practices, and making other changes based upon the State Bar's experience operating the program.
- New Rule of Professional Conduct 1-400(D)(6), approved by the Supreme Court on November 25, 1996, also became effective on June 1. The rule prohibits a member from advertising as a "certified specialist" unless the member is certified either by the California Board of Legal Specialization or another entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors (the accreditation standards became effective on June 1 as well). The rule also requires the member to state the complete name of the entity that granted certification.
- The National Board of Trial Advocacy's certification programs in civil and criminal trial advocacy were accredited by the State Bar.
- 1998 The American Board of Certification's programs in business bankruptcy law, consumer bankruptcy law, and creditors' rights law and the National Elder Law Foundation's certification program in elder law were accredited by the State Bar.
- 1999 The National Board of Trial Advocacy's certification program in family law trial advocacy was accredited by the State Bar.
- 2002 The American Board of Professional Liability Attorneys' certification programs in accounting, legal and medical malpractice were accredited by the State Bar.

- 2003 The program rules and standards were revised effective January 1. There were two significant changes to the rules: (1) an increase from three to five in the number of years during which the percentage of practice requirement applies; and (2) the addition of criteria relating to discipline and professional negligence that may be used in evaluating an applicant's proficiency and ethics, and the imposition on the applicant of a duty to disclose such criteria within a given time frame.
- 2004 The program rules were revised effective July 24 to (1) allow suspension and revocation of certification based on non-disciplinary regulatory actions; (2) give voting rights on the CBLS to all Advisory Commission chairs (prior to the change, only six of the eight chairs voted on a rotating basis); and (3) allow release of confidential information on an applicant's file to the Office of Chief Trial Counsel, which represents the CBLS when an applicant appeals the denial of his or her certification or recertification, without first having to request approval from the Board of Governors. The Appellate Law Standards were also revised to clarify the education requirement.

Effective September 11, the name of the Personal and Small Business Bankruptcy Law specialty was changed to Bankruptcy Law.

NUMBER OF CERTIFIED SPECIALISTS

As of December 31, 2004, the following were the number of certified specialists:

Specialty Field	
Appellate Law	222
Bankruptcy Law	101
Criminal Law	348
Estate Planning, Trust & Probate Law	779
Family Law	1064
Immigration & Nationality Law	137
Taxation Law	404
Workers' Compensation Law	882
TOTAL	3937

THE VOLUNTEER EFFORT

From the development of the initial proposal to create a new specialty area to the administration of existing specialty areas, the program is led by volunteers assisted by the Office of Certification. During 2004, nine separate committees made up of volunteers administered the program: the CBLS and the Advisory Commissions for each of the eight specialty areas.

The CBLS and each of the Advisory Commissions meet at least six times a year in Northern and Southern California locales. Members are appointed to three-year terms. In addition, consulting groups are appointed on an ad hoc basis to develop and make recommendations as to certification standards for new specialty areas.

CBLS

The CBLS, which is appointed by the Board of Governors, is charged with overall administration of the program, recommends new specialty areas and modifications to existing specialty areas to the Board of Governors, and acts upon the recommendations of the Advisory Commissions for approval or denial of certifications and recertifications. It is composed of 11 members, at least three of whom must be public members, and one advisor (traditionally the previous year's chair). In addition, six of the eight Advisory Commission chairs sit on the CBLS as voting members on a rotating basis.

For the 2004-2005 committee year beginning October 11, 2004, Alice J. MacAllister, San Jose, is serving as Chair, J. Scott Bovitz, Los Angeles, as Vice-Chair, and John W. Munsill, Gold River, as Advisor.

Advisory Commissions

The Advisory Commissions, also appointed by the Board of Governors, devise the specialty examinations, review certification and recertification applications, and act on applications for approved education provider status or approval of individual education activities. Each of the eight Advisory Commissions is composed of nine members, at least one of which is a public member.

Council of Past Chairs

In November 1996, the Board of Governors created and appointed a Council of Past Chairs of the Board of Legal Specialization to advise and consult with the CBLS on an ad hoc basis. The Council consists of no more than the last five chairs of the CBLS who are willing and able to serve.

ADR Consulting Group

The CBLS chose alternative dispute resolution (ADR) as a possible new area for certification because perhaps no other field of legal practice is experiencing such a demand for skilled practitioners from both the consuming public and the judiciary, and the CBLS believes that the State Bar's membership, the courts, and the public deserve State Bar oversight of attorneys who choose to specialize in this field.

The ADR Consulting Group was appointed by the State Bar Board of Governors in July 2003 to determine whether certification in the field of ADR was feasible and, if so, to create its standards. The group, which consisted of experienced arbitrators, mediators, private judges, law professors, and practitioners of collaborative law, focused on certification of neutrals (arbitrators and mediators) and certification of attorneys who represent clients in ADR matters. The group met five times and presented its report and recommendations to the CBLS at its March 12, 2004 meeting. The report recommended that certification not be pursued for any of the groups under consideration. In addition, the report made several observations: that ADR education should be part of the law school curriculum; that MCLE programs should regularly address ADR issues; that the State Bar should consider including ADR on the bar exam; that established specialty certification areas, such as family law, should consider addressing ADR issues as a subset of their existing specialties; and that the State Bar should consider playing a role in the issue of credentialing of mediators.

The ADR Consulting Group report was presented to the State Bar Board Committee on Oversight at its April 2004 meeting with a request that it be published for public comment. The Board Committee accepted the report but did not think that authorizing publication for public comment was appropriate.

Real Estate Law Consulting Group

In September 1996, the Board of Governors appointed a Real Estate Law Consulting Group at the request of the CBLS. The area of real estate law was chosen as a potential area for certification because of the myriad of issues centered around real estate (e.g., landlord/tenant lease documentation, land use, bankruptcy, negotiation and eviction procedures, partnerships and entity formation, brokerage disputes, affordable housing, etc.) and the perceived increasing need for consumers to be able to identify attorneys who have demonstrated proficiency in that field.

The Consulting Group met several times but, due to the State Bar's funding crisis, which left remaining staff able to focus only on application processing and other essential administrative duties, did not present its final report and recommendations to the CBLS. At the end of 2003, staff contacted members of the Consulting Group to determine if there was still interest in pursuing the specialty and discovered that several members were still available and willing to continue the task. Working with members of the State Bar's Real Property Law Section Executive Committee, the Consulting Group completed drafting of the standards for certification and recertification and expects to present them to the CBLS in February 2005.

(See Appendix A for CBLS, Advisory Commission, Council of Past Chairs, and ADR and Real Estate Consulting Group rosters.)

THE STAFF

The Office of Certification handles twelve programs, including Legal Specialization. The day-to-day operations of the program include processing applications

for certification, recertification and approved provider/individual education activity approval; answering inquiries about the program from the public and members of the bar; staffing the CBLS, Advisory Commissions and consulting groups; maintaining the Legal Specialization website; developing and monitoring the budget; assisting in the development and administration of the legal specialist exams; maintaining and distributing lists of certified specialists and approved education providers and programs; and attending professional and educational conferences in order to promote the program.

BUDGET/FISCAL MATTERS

Section 20.8 of the Rules mandates that the program be self-supporting. It is completely funded by fees collected from applicants, certified specialists, education providers, and accredited organizations. The program draws no monies from the State Bar's general fund and, in fact, pays into the general fund for infrastructure costs such as space, equipment, and computer services. The program is budgeted on a fiscal year basis.

The office of the CBLS is located at The State Bar of California, 180 Howard Street, San Francisco, CA 94105.

ACTIVITIES OF THE PROGRAM

CONTINUING LEGAL EDUCATION

One of the most important functions of each of the Advisory Commissions is to supervise the quality of proposed continuing legal education programs that may be attended by those individuals seeking education units needed to meet the requirements of certification or recertification. Applicants for certification are required to complete 45 hours of approved education activities during the three years immediately preceding application. Applicants for recertification are required to complete 60 hours of education during their current certification term.

Under the Rules that became effective January 1, 1996, the Advisory Commissions are authorized to approve providers of education programs for a period of up to two years. To qualify as an approved provider, the provider must demonstrate that, in the two years immediately preceding application, it put on at least four education programs that complied with the requirements for education program content. Like MCLE, approved Legal Specialization provider status allows providers to offer an unlimited number of programs for legal specialization credit without having to submit each one for approval.

The following statistics reflect the number of approved legal specialization providers as of December 31, 2004, and the number of applications for approval of individual CLE programs received during the period of January 1, 2004, through December 31, 2004:

Advisory Commission	# of Approved Providers	# of Applications for Individual Programs
Appellate Law	13	12
Bankruptcy Law	1	2
Criminal Law	7	4
Estate Planning, Trust & Probate Law	14	27
Family Law	18	21
Immigration & Nationality Law	2	9
Taxation Law	11	22
Workers' Compensation Law	16	17
TOTAL	82	116

EXAMINATIONS

Examinations take place in alternate years. On August 14, 2005, examinations in all specialty areas will be given in San Francisco and Los Angeles.

ACCREDITATION OF SPECIALTY CERTIFICATION PROGRAMS FOR ATTORNEYS ("CERTIFYING CERTIFIERS")

Rule of Professional Conduct 1-400(D)(6) prohibits a member from advertising as a "certified specialist" unless the member is certified by the California Board of Legal Specialization, or another entity accredited by the State Bar to designate specialists pursuant to standards adopted by the Board of Governors. The following certification programs have been accredited by the State Bar pursuant to the Rules Governing Accreditation of Specialty Certification Programs for Attorneys:

Certifying Organization	Certification Programs	# of CA Attorneys Certified
American Board of Certification	business bankruptcy law	33
	consumer bankruptcy law	8
	creditors' rights law	7
American Board of Professional Liability Attorneys	accounting malpractice	0
	legal malpractice	5
	medical malpractice	13
National Board of Trial Advocacy	civil trial advocacy	115
	criminal trial advocacy	7
	family law trial advocacy	2
National Elder Law Foundation	elder law	30
	TOTAL	220

An application is pending for accreditation of the National Association of Counsel for Children's certification program in juvenile law (child welfare).

INTERNET

The CBLS maintains a website at www.californiaspecialist.org where visitors can search for a certified specialist by area of law and county. Attorneys interested in becoming certified can use the site to find information on the process, including the latest exam information and registration form, the program's rules and regulations, and the standards for certification. Also found on the site are a list of approved legal specialist education providers, the *Legal Specialization Digest*, an order form for consumer brochures, applications for recertification, and the CBLS logo for use in advertising.

PUBLIC AWARENESS

The program continued its established public awareness activities:

- ◆ Photo ads in the *California Bar Journal*
- ◆ Continued funding of Chuck Finney's National Public Radio program, *Your Legal Rights*, a weekly call-in format that features certified specialist as guests at least once a month and, new in 2004, Call A Lawyer Night featuring certified specialists
- ◆ Annual publication of the list of certified specialists in the *Parker Directory*
- ◆ Biannual publication of the *Legal Specialization Digest*
- ◆ Publication of consumer pamphlets in English and Spanish
- ◆ Maintenance of the program website at www.californiaspecialist.org
- ◆ Annual reception recognizing specialists who have been certified for 20 and 30 years and those on judicial service
- ◆ Information booths at the State Bar Annual Meeting, Section Education Institute, and other professional and educational conferences
- ◆ Distribution of program Information at district and county bar meetings

CBLS LOGO



Registration of the CBLS logo as a certification mark with the U.S. Patent and Trademark Office was completed in 2004. Under California Rule of Professional Conduct 1-400(D)(6), attorneys who hold themselves out as certified specialists must identify the certifying body. Certified specialists may use the logo in their advertising instead of, or in addition to, spelling out "The State Bar of California Board of Legal Specialization." Use of the logo is intended to present a consistent, identifiable image for specialization apart from regular Bar membership in order to promote recognition of specialist certification among attorneys and the consumers of legal services.

RECOGNITION PROGRAMS

The Board of Legal Specialization has established recognition programs for certified specialists who have been continuously certified by the CBLS in a particular specialty area for twenty and thirty years and for those on judicial service. Attorneys certified in the areas of criminal law, family law, taxation

law and workers' compensation law, and those serving as bench officers, were honored at a reception on October 8, 2004, during the State Bar's Annual Meeting in Monterey. The reception was presided over by then CBLS chair, John W. Munsill, who presented certificates of appreciation to the attorneys and judges who were able to attend in person. Those unable to attend received their certificates by mail.

This was the first year that the program honored those on judicial service, recognizing 83 certified specialists who serve as bench officers. Those reaching the 30-year mark included 5 certified criminal law specialists, 9 certified taxation law specialists, and 7 certified workers' compensation law specialists. Twenty-year honorees included 7 certified criminal law specialists, 16 certified family law specialists, 10 certified taxation law specialists, and 10 certified workers' compensation law specialists.

CHANGES TO THE PROGRAM RULES AND STANDARDS

The CBLS, its Advisory Commissions, and Office of Certification staff regularly review the Rules with an eye toward incorporating administrative practices that have evolved over time, streamlining the certification process to make the program as efficient and cost-effective as possible, and making other necessary changes based on the experience of the CBLS and Office of Certification staff in administering the program. The standards for certification and recertification are also reviewed to insure that the requirements reflect current practice and terminology in each specialty area.

In July 2004, the State Bar Board of Governors approved changes to the Rules intended to enhance the ease of administration of the Legal Specialization program by (1) allowing suspension and revocation of certification based on non-disciplinary regulatory actions; (2) giving voting rights on the CBLS to all Advisory Commission chairs (prior to the change, only six of the eight chairs voted on a rotating basis); and (3) allowing release of confidential information on an applicant's file to the Office of Chief Trial Counsel, which represents the CBLS when an applicant appeals the denial of his or her certification or recertification, without first having to request approval from the Board of Governors. The Board also approved changes to the Appellate Law Standards intended to clarify the education requirement.

In September 2004, the Board approved changing the name of the Personal and Small Business Bankruptcy Law specialty to Bankruptcy Law. Accordingly, the Bankruptcy Law Standards were also changed to add representation of corporate or partnership debtors under chapter 11 of the Bankruptcy Code and revise the task and experience requirements to reflect chapter 11 practice. The specialty was established in 1993 with a focus on personal and small business bankruptcy. Since that time, it had become evident that the name was not user-friendly to consumers trying to find a bankruptcy specialist. It also erroneously suggested that certified personal and small business bankruptcy specialists were not capable of handling other than small business matters and, as a result, discouraged bankruptcy specialists who handled chapter 11 matters from seeking certification.

IDENTIFICATION OF PROBLEM AREAS AND RECOMMENDATIONS

Section 21.0 of the Rules requires that the CBLS annual report identify problem areas and recommend appropriate solutions. During this reporting period of January 1, 2004 to December 31, 2004, the CBLS has identified the following continuing areas of concern.

PROGRAM GROWTH

While the program continues to grow by adding new specialists to its existing areas of certification, the addition of new specialties continues to be problematic. Attempts to explore new areas of certification are often met with opposition. Non-attorney service providers sometimes view attorney certification in their area of business (e.g., mediation) as a potential method for “licensing” attorneys to the exclusion of others. Established attorneys can view proposed development of a new certification in their area of practice as a threat to their professional ranking and/or their ability to attract clients without jumping what they perceive as unnecessary hurdles.

Specialization is a public protection program. It offers consumers a way to identify attorneys who are proficient based on objective criteria. Further, it provides attorneys who choose to participate in the program a method for promoting themselves professionally with colleagues, their clients, and the courts.

Since the inception of specialty certification, California has always been in the forefront. It is imperative that California continue in its national leadership role for the benefit of the consumer, the attorney and the bar. California can continue to be a leader in specialty certification through development of new specialties and continued growth in the existing specialties only with the continued support of the courts and the State Bar.

INCREASING PUBLIC AWARENESS

Another factor in program growth is the level of awareness of the certification program among attorneys, consumers, and education providers. The program has been in existent for 30 years and its current population is aging. The CBLS needs to reach newer practitioners to make them aware of the program and its benefits.

Attorneys and Consumers

In early 2004, the CBLS contract with The Ardent Group, a public relations firm, to provide the CBLS with a menu of publicity and public awareness options that could be used to promote the program. The Ardent Group submitted its report to the CBLS in October 2004 and the CBLS is in the process of evaluating the items to determine which are the most feasible and cost-effective to pursue.

Education Providers

The CBLS is also working toward increasing both awareness of the program among education providers, as well as the number of specialist-level CLE activities they offer, by

- mailing information about the program to MCLE approved providers, encouraging them to submit specialist-level courses for approval and obtain approved legal specialist provider status
- continuing to develop learning objectives for each area of law that can be distributed to education providers to help them develop courses for specialists
- encouraging education providers, including state and local bar sections, to develop courses that will help attorneys prepare for the legal specialist exam and provide exam information to their course participants
- coordinating with the MCLE program to develop a streamlined application process for providers who want to apply for both MCLE and legal specialist approval

Appendix A
Roster of Volunteers
(not included)